



**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

FAMILY LAW

Tuesday 12 February 2019

**1330 – 1530
(Two Hours)**

Candidates should attempt THREE questions.

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Question 1

Advise each of the parties as to whether or not they have legal grounds for divorce:

- (a) Dave and Sally have been married for 10 years and have two children (aged 7 and 9). Sally recently discovered some explicit text messages on Dave's phone and, when confronted, he confessed that he and his work colleague, Caroline, had got into the habit of flirting in the office and sexting but, apart from some kissing at the recent Christmas party, he swears it has gone no further. Sally says she has always told him that infidelity is absolutely unforgivable and she intends to seek a divorce, Dave says he knows he has behaved badly but it is over, it meant nothing and he wants them to stick together. Advise Sally as to whether she has grounds for divorce.
- (b) Bob and Bill were one of the first same sex couples to marry in Scotland but sadly they have drifted apart. Bob is committed to monogamy but Bill has been having a sexual relationship with Carlos. They agree to divorce and Bill says he is happy for Bob to raise the action for divorce on the basis of Bill's adultery. Advise Bob whether he can proceed on this basis.
- (c) Louise and John have been married and settled in Edinburgh for 12 years when John was offered a new job in London. They agreed that John would go ahead and settle in while Louise stayed in Edinburgh and made plans to sell their house. Their original plan was to spend weekends together but with John so busy at work and Louise rediscovering her single social life, it rarely happens. By the time this arrangement has been going on for a year, Louise tells John she has decided she is happier on her own and she wants a divorce. John is shocked but says he will not make it difficult for her. Advise Louise how to proceed.

Question 2

Ella, who is recently divorced, and Joe, a widow, are planning to marry in Scotland. They would like to get married on the banks of Loch Lomond, as they both love the outdoors. While neither of them is particularly religious, they both have a strong sense of spirituality and would love to have a wedding, which could reflect their own beliefs. They would also like a ceremony where they could use their own words to express their commitment to each other. While they want their wedding to be as personal as possible, they also want to make sure that it complies with all of the legal rules.

Advise Ella and Joe as to the options for various types of marriage ceremony in Scotland and as to the practical requirements with which they must comply.

Question 3

Explain how Scots law identifies the parents of a child born (a) as a result of traditional conception and (b) as a result of assisted reproduction. Would you recommend reform of any part of the current rules?

Question 4

Anna (48) and Bryan (51) have been married for 20 years and have two children, Lucy (15) and Archie (13). When he was 25, Bryan inherited, together with his younger brother, Duncan, the family farm. The brothers have successfully run the business since then, developing it as an organic farm and seeing its value rise from £250,000 to £950,000. Initially Anna and Bryan lived in Bryan's parents' farmhouse but when Lucy was born, they bought a bigger house on some adjoining land. They paid £160,000 for it, most of the purchase price coming from money Bryan had also inherited from his parents, and it was recently valued at £450,000.

Bryan recently confessed to Anna that he has been having an affair with a neighbour, Cathy, that she is pregnant and that he plans to marry her as soon as he can. Anna is devastated and very worried about her financial position. Anna was a qualified accountant but she stopped working when Lucy was born and since then has devoted herself to her family. Although she gave up her career, Anna has managed all of the accounts for the farm and she deals with the regulations required to maintain their organic status. Anna has never been formally employed by the business and, despite Bryan often reassuring her that 'they could not do it without her', she has no formal status. Although Bryan has always been reasonably generous with the joint bank account, she has no separate savings.

Anna is determined to stay in the house because the children are settled and close to their fee-paying school but she is really worried about how she will survive with no income and no immediate prospect of paid employment.

Advise Anna as to what she should seek in terms of financial provision from Bryan.

Question 5

Jamie (9) and Jodie (4) have lived with their mother, Amanda, in Edinburgh since she left their father, Mike, nine months ago. Amanda sought advice from a Women's Aid advice line several times in the weeks before she left about Mike's increasingly controlling and threatening behaviour towards her. Initially she agreed with Mike that he could have the children to stay with him every second weekend but, after a few months, she cancelled the weekend stays. It all began when the children came back one weekend very distressed and Jamie told her that Mike had locked Jodie in her bedroom for waking up too early. Since then, they have told her about various other incidents including both Mike and his new partner, Rosie. Both children are adamant that they do not want to see Mike any more, Jodie has begun having nightmares about him and Rosie chasing her with a knife and Jamie's teacher has been in touch with Amanda to discuss worrying changes in his behaviour at school. Amanda's mother and sister, both of whom live near Birmingham, have been trying to persuade her to move closer to them. Her sister, who runs her own successful business, has offered Amanda a good job, there is plenty of space in Amanda's mother's house for all three of them and there are excellent schools nearby. Amanda thinks it is the fresh start they all need and the children are very excited about the move. Mike, however, has found out about their plans and is determined to stop them going or at least to ensure that he has regular contact with the children.

Advise Amanda on what legal action Mike might take and how a court is likely to deal with it.

Question 6

With reference to relevant cases, outline and critically assess the protection afforded by s28 of the Family Law (Scotland) Act 2006 to cohabitants, on the breakdown of their relationship.

END OF QUESTION PAPER